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PUBLIC UTILITIES
COMMISSION

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FILED

BEFORE THE STATE OF HAWAII PUBLIC UTILITIES COMMISSION

In the Matter of:

MOLOKAI PUBLIC UTILITIES, INC.,
WAI'OLA O MOLOKA'I, INC., and:
MOSCO, INC FOR

DOCKET NO. 2008-0115

WEST MOLOKAI ASSOCIATION'S REPLY
TO COUNTY OF MAUI'S RESPONSE TO
MOTION TO INTERVENE;
CERTIFICATE OF SERVICE

For Temporary Rate Relief.

**WEST MOLOKAI ASSOCIATION'S REPLY TO COUNTY OF MAUI'S RESPONSE TO
MOTION TO INTERVENE**

On July 3, 2008 West Molokai Association (WMA) filed a Motion to Intervene in the above-captioned proceeding. Support for that motion was set forth in a fashion prescribed by Commission Rule 6-HAR-61-55(b).

By document dated July 10, 2008, County of Maui ("COM") welcomed WMA's participation in the above-captioned proceeding. However, COM expressed two basic concerns. Each of the concerns will be addressed in this "Reply" by WMA.

COMPOSITION OF WMA'S GOVERNING BOARD

COM expressed its concern that WMA has "two bites of the apple" with regards to the water situation on the West End of Molokai, because a member of WMA's Board is an officer of

Utilities. Actually, there are two members of WMA's Board affiliated with Molokai Ranch, namely Yolanda Reyes and Daniel Orodener.

In accord with WMA's protocols, the two name individuals were directed by the WMA Board to recuse themselves from all matters related to the subject matters of this Commission proceeding, as well as other Ranch-related matters. The individuals complied with the directives.

There is no basis for counting WMA's "bites at the apple ."

COM'S LEGAL RESPONSIBILITIES WITH REGARD TO MOLOKAI'S WATER

RESOURCES

COM states "the County has no legal responsibility for providing basic water and sewer services..." (Refer, COM Response, p.2.). COM may not have a legally enforceable duty to deliver potable water to WMA's members. At present, that duty lies with the PUC-certificated, privately-owned public utility companies. But COM cannot disavow involvement in many of the issues surrounding WMA's threatened loss of water.

COM'S WATER USE AND DEVELOPMENT PLAN

With regard to the Hawaii's Water Plan, each county shall prepare a "Water Use and Development Plan" and have it adopted by ordinance, setting forth the allocation of water by land use in that county." (Refer, Subsection 174 C-31(a)(2) Haw.Rev.Stat.) The cost for the development of the initial water use and development plan for each county shall be funded by the state in an amount not exceeding \$150,00 per county. (Refer Subsection 174 C-31(b)(4), Haw.Rev.Stat.

Interestingly, with regard to COM's responsibility for water use and development, COM failed to participate in the permit proceeding conducted by the State of Hawaii Commission on Water Resource Management (CWRM). In the initial CWRM administrative proceeding, and then on appeal before the Hawaii Supreme Court, and then upon remand to CWRM, COM has yet to participate in the proceeding to set forth water allocations for a substantial portion of the island of Molokai.

In Section 8-11.2, of COM's Charter, it states the Department of Water Supply "shall manage and operate all water systems owned by the county." In order to protect and manage the water resources in the county, such department "shall make studies, surveys and investigations relating to the locations and sources of water supply within the county, the amounts available for current and prospective uses, the water resources which may be available for such uses and the maximum sustainable yield of such sources."

Such studies, surveys, and investigations by COM will be enormously helpful in this proceeding. On the island of Molokai -- where COM contends it has no responsibilities or obligations to provide potable water within the service areas of Molokai Public Utilities Inc, Waiola o Molokai, and MOSCO -- COM delivers large portions of all of the potable water consumed by the residents, industrial customers and commercial customers of the Island of Molokai.

The COM appears to have made a generic concession with regard to its duties with potable water, at least in the context of a court proceeding, either at trial or on appeal:

The Board of Water Supply contends that it has only a duty to provide potable water for humans and that it has no duty under any circumstances to provide water suitable for a human's pet fish. While we agree that the Board of Water Supply's duty to humans is primary, we hold that it has secondary duty to a human's property, which may include a pet fish. Kajiya v. Department of Water Supply 2 Haw.App. 221, 224; 629 P.2d 635 (1981).

The circumstances of that case clearly indicate that COM owned the water distribution system that allegedly gave rise to the law suit.

In summary, while there is no specific statutory or other codified law stating COM's obligation to take over the potable water distribution system serving WMA's membership, there is ample law suggesting COM does have specific duties with regards to allocation of water in the County and, more generally, legal obligations with regard to public health and safety.

COM'S WASTEWATER RESPONSIBILITIES

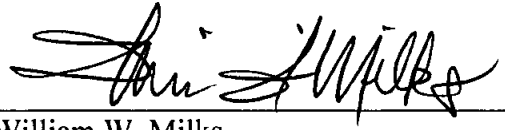
With regard to the regulation of the design, construction, and operation of individual waste water systems and private waste water treatment works, such functions were reassigned to the counties, the reassignment taking place upon the date of the expenditure of start-up funds. (Refer, Subsection 27-21.6(5), HawRevStat.) WMA has yet to ascertain when the start up funds were expended by the State as a payment to COM.

CONCLUSION

WMA concedes that COM has no legal duty under codified law to provided potable water to the West End of Molokai. WMA contends, however, that COM has sufficient nexus with the preservation, protection, recovery, delivery, distribution and sale of water on the island of Molokai that, at a minimum, Commission's participation in this proceeding offers potential solutions to the many water-related problems confronting WMA, and WMA's threatened imminent loss of potable water.

Dated: Honolulu, Hawaii, July 22, 2008.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "W. W. Milks", written over a horizontal line.

William W. Milks,
Counsel for West Molokai Association

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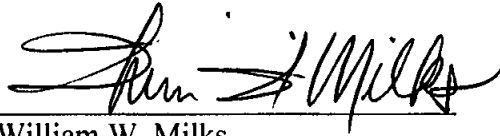
I hereby certify that on this date a copy of the foregoing document was served upon the following by First Class Mail, by depositing copies bearing sufficient postage with the U.S. Post Office, addressed as follows:

Peter A. Nicholas, Director
Daniel Orodener, General Counsel
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Dated: Honolulu, Hawaii, July 23, 2008.

A handwritten signature in black ink, appearing to read "William W. Milks", written over a horizontal line.

William W. Milks

Attorney for all named Defendants/Appellees